

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 14-48-BMM

Plaintiff,

vs.

NICHOLAS REY RIOS,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Rios of violating his conditions of supervised release by submitting an oral swap that tested positive for methamphetamine. Mr. Rios admitted to the violation. His supervised release should be revoked. The Court should sentence him to custody until June 4, 2017, with supervised release to follow. His term of supervised release should begin with treatment at Gateway Community Services.

II. Status

United States District Judge Brian Morris sentenced Mr. Rios to thirty months in custody followed by thirty-six months of supervised release on March 9, 2015, after he pleaded guilty to Possession of Controlled Substance with Intent to

Distribute. (Doc. 49.) His current term of supervised release began on December 9, 2016.

The United States Probation Office filed a Report on Offender Under Supervision on February 8, 2017, notifying the Court that Mr. Rios tested positive for methamphetamine on December 14, 2016. (Doc. 53.) The Court allowed Mr. Rios to continue his supervised release and referred him to substance abuse treatment.

The Probation Office filed a second Report on Offender Under Supervision on February 27, 2017, notifying the Court that Mr. Rios failed to report for substance abuse treatment and tested positive for methamphetamine. (Doc. 54.) The Court allowed him to continue his supervised release.

Petition

The Probation Office filed a petition seeking the revocation of Mr. Rios's supervised release on March 31, 2017, alleging that he violated the conditions of his supervised release by submitting an oral swap that tested positive for methamphetamine. (Doc. 55.) Judge Morris issued a warrant for his arrest based on the allegations in the petition. (Doc. 56.)

Initial appearance

Mr. Rios appeared before the undersigned on May 16, 2017, in Great Falls,

Montana. Federal Defender Tony Gallagher accompanied him. Assistant United States Attorney Jared Cobell represented the United States.

Mr. Rios said he had read the petition and understood the allegations. He waived the preliminary hearing, and the parties consented to proceed immediately with the revocation hearing before the undersigned.

Revocation hearing

Mr. Rios admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release.

Mr. Rios's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months. He could be ordered to remain on supervised release for thirty-six months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Mr. Gallagher recommended that the Court sentence Mr. Rios to custody until June 4, 2017, with supervised release to include treatment at Gateway Community Services to follow. Mr. Cobell agreed with the recommendation.

III. Analysis

Mr. Rios's supervised release should be revoked because he admitted violating its conditions. He should be sentenced to custody until June 4, 2017,

with supervised release to include treatment at Gateway Community Services to follow. This sentence would be sufficient given the seriousness of the violations but not greater than necessary.

IV. Conclusion

Mr. Rios was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

Nicholas Rey Rios violated the conditions of his supervised release by submitting an oral swab that tested positive for methamphetamine.

The undersigned **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Rios's supervised release and sentencing him to custody until June 4, 2017, with supervised release to follow to include treatment at Gateway Community Services.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 24th day of May 2017.



John Johnston
United States Magistrate Judge